

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "first transporting means", "second transporting means" and "agitating means" as the same component in claim 33 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
4. The drawings are objected to because there is no specific reference to Figs. 5B-9A in the brief description of the drawings on page 10 of the specification.
5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

6. The disclosure is objected to because of the following informalities: the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.

(a) TITLE OF THE INVENTION.

(b) CROSS-REFERENCE TO RELATED APPLICATIONS.

(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR
DEVELOPMENT.

(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A

“Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 33-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 33 recites "wherein the first transporting means, the second transporting means and the agitating means are the same component." This is confusing and

indefinite since it is unclear as how the different elements are the same component.
Furthermore, this is not shown the figures.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 18-19, 24-25, 27-28 and 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Comte et al., (US Patent Pub. No. 2002/0021983), hereinafter "Comte".

Comte teaches a device for supplying whole blood analyzers with tubes of blood. The analyzer of Comte comprises an agitating means (mobile head 100 and head 142) located upstream of at least one analyzer (hematological instruments), first transporting means (part of conveyor 10 from load station 14 to mixing position 30) for transporting the tubes of blood one after the other to the agitating means 100, second transporting means (part of conveyor 10 from mixing position 30 to unloading station 16) for transporting the tubes of blood mixed by the agitating means, one after another to a sampling point 34 of the analyzer. The first and second transporting means are one and the same conveyor 10.

Comte teaches manipulating means 32 for separately picking up the tubes of blood which have not yet been mixed, located in front of the agitating means, and

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placing them in the agitating means to agitate them using the agitating means, and for separately removing the tubes of blood from the agitating means and placing them in the second transporting means for the mixed tubes to the sampling point of the analyzer. By using loading means 82, the device of Comte can be used without agitating means (see fig. 1 and paragraph [0098]-[0100]).

As to claim 24, the agitating means 100 comprises a manipulating arm 95 provided with grippers 32 for taking hold of the tubes on the first transporting means and agitating the tubes by rotating the gripper about the longitudinal axis of the manipulating arm.

Regarding claim 25, the agitating means 142 comprises a cylinder or wheel to rotate or tilt with indentations 144 for holding the tube.

As to claim 27, the first and second transporting means take the form of a conveyor belt.

With respect to claim 28, each tube fits inside a support member 12 located on the transporting means.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comte (US Patent Pub. No. 2002/0021983) in view Takahashi et al., (US Patent no. 6,290,907).

The teachings of Comte have been summarized previously, *supra*. Comte does not teach the first and second transporting means including different conveyors or a means for reading the identifying means of the tubes.

Takahashi teaches a modular analyzer system comprising a plurality of different conveyors (1a-i) and a bar code reader 15 for reading the identifying means (barcodes) of the tubes, thus enabling each tube to be directed towards an analyzer depending on the type of analysis specified by the identifying means.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to have included in Comte the multiple conveyors of Takahashi so that the analyzer system can be detached and rearranged into different configurations so as to fit within a laboratory workspace.

14. Claims 26, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comte (US Patent Pub. No. 2002/0021983) in view Kleinsasser (US Patent Pub. No. 2001/0002985).

As discussed above, Comte apparatus includes a manipulating arm 95 for introducing the tubes, one by one, into the agitating means 100. The manipulating arm 95 comprises grippers 32 for gripping the tubes. Comte does not teach the agitation means comprising a plurality of wheels aligned along the same rotational axis inside a housing; the wheels being e provided with indentations for accommodating tubes that are to be agitated.

Kleinsasser does teach the agitation means comprising a plurality of wheels 3 aligned along a same rotational axis (i.e., horizontal axis) inside a housing; the wheels 3 are provided with indentations 29 for accommodating tubes that are to be agitated.

Accordingly, it would have been obvious to one of ordinary skill in the art to provide Comte with an agitating means having a housing with a plurality of wheels, as taught by Kleinsasser, so as to maximize the number of samples that can be mixed at once, thereby increasing analyzer throughput.

15. Claim 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comte (US Patent Pub. No. 2002/0021983) in view Kleinsasser (US Patent Pub. No. 2001/0002985), applied to claim 29 above, in further view of in view Schmidt et al., (US Patent Pub. No. 2001/0048894), hereinafter "Schmidt".

The combined teachings of Comte and Kleinsasser have been summarized previously above. Comte does teach a manipulating arm for gripping the tube supports. However, neither Comte or Kleinsasser teach the arm having a electromagnetic module for adhering the tube support to the end of the manipulating arm.

Schmidt does teach a manipulating arm 500 for gripping the tube supports having a electromagnetic module (magnets 528) in the gripping means which assists in the gripping function of the jaws 504, 506 thereby helping adhere the tube support to the end of the manipulating arm, see fig. 2a.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to include the Schmidt electromagnetic modules in the gripping means of Comte and Kleinsasser, since Schmidt teaches that it is important that the vial be gripped with sufficient force to ensure that it will not drop during transport and delicately enough such that damage to the vial does not occur. Moreover, it is important that in the event of power failure, the gripper does not suddenly open and allow the vial to drop, see for example paragraph [0006] of Schmidt.

Conclusion

16. No claims are allowed.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Coulter et al., (US Patent no. 4,609,017) and Veiner et al. (US Patent Pub. No. 2005/0196320) for teaching a device for supplying tubes having an agitating means, first and second transporting means and manipulating means for picking the tubes.

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18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Wright whose telephone number is 571-272-2374. The examiner can normally be reached on Monday thru Thursday, 9 AM to 6 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

pkw

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797